

The Religious Freedom Peace Tax Fund Act: Becoming Conscious of the Need to Accommodate Conscience

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The government exempts conscientious objectors from military service to ensure that these individuals are not compelled to violate their beliefs through participation in war. However, to many conscientious objectors using their tax dollars to fund war is as morally reprehensible as compelling them to participate in war. This is particularly true given that technology and equipment, purchased with tax dollars, are the primary resources used to fight wars in the modern world. Despite conscientious objectors' deeply held beliefs, paying taxes is an inescapable part of American life. This Note advocates the Religious Freedom Peace Tax Fund Act as a constitutional and practically feasible solution to this problem. The Act would create a mechanism through which conscientious objectors' tax dollars would be allocated to fund only non-military programs.

Section II of the Note provides a brief history of conscientious objection in America and describes the ways in which these beliefs have been accommodated over time. Section III explains the current state of conscientious objection and war tax resistance. Section IV sets forth the details of the proposed Religious Freedom Peace Tax Fund Act. Section V demonstrates that the Act is a constitutionally permissible accommodation under the First Amendment. Section VI addresses several of the primary criticisms advanced by the Act's opponents. Finally, Section VII presents the practicalities associated with implementation of the Act.

I. INTRODUCTION

Conscientious objectors to tax, unlike other tax protestors, generally accept the legal legitimacy of the income tax.¹ However, they contest the moral legitimacy of allocating a portion of the income tax to military expenses and argue that requiring them to pay these taxes violates their freedoms.² These concerns are particularly timely in the wake of the war in Iraq and the United States's continued military involvement in the Middle East and other countries

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¹ Marjorie E. Kornhauser, *For God and Country: Taxing Conscience*, 1999 WIS. L. REV. 939, 942–43. “Standard tax protestors . . . refuse to pay tax because they resent having to pay so much tax, because they opposed the concept of the State in principle, or because they oppose the particular government. Many are alienated and deny the right of the U.S. government to tax them on a variety of grounds . . .” *Id.* at 942–43 (footnote omitted).

² *Id.* at 960.

throughout the world.³ In the modern world, technology and equipment, more so than manpower, are the primary resources used to fight wars.⁴ Attaining the most superior technological advancements requires funding, including funding through citizens' tax dollars.⁵ Just as conscientious objectors argued that they should not be required to participate in war, many of these individuals argue today that they should also be exempt from the funding of war.

Conscientious objectors' lives are profoundly affected by their beliefs. They do not merely dislike or disagree with these laws;⁶ rather, they model their behavior in a manner that enables them to remain true to their beliefs.⁷ For example, many refuse, at great penalty, to pay income taxes or even make a decision to live below the poverty line in order to avoid tax liability.⁸ These individuals⁹ and society as a whole suffer as a result of their decisions.¹⁰ The United States cannot function without tax dollars and thus, these individuals'

³ See Dexter Filkins & Richard A. Oppel Jr., *Humvee is Bombed on a Baghdad Street, Killing a Soldier*, N.Y. TIMES, July 29, 2003, at A10 (reporting that, despite the fact that President Bush declared an end to the war in Iraq on May 1, 2003, U.S. occupation of Iraq continues and the number of American casualties continues to grow); Elaine Sciolino, *France and Germany Consider Possible Roles in Postwar Iraq*, N.Y. TIMES, July 29, 2003, at A10 (referring to the American military's occupation of Iraq as "open-ended"); *Marketplace: Peace Tax* (NPR radio broadcast, Sept. 20, 2002), available at http://www.Marketplace.org/shows/2002/09/20_mpp.html (last visited Oct. 23, 2003).

⁴ *Statements on Introduced Bills and Joint Resolutions*, 131 CONG. REC. S19,601 (1985) (statement of Sen. Hatfield) (noting that "[t]echnology now supersedes the foot soldier in importance; the conscription of dollars precedes the conscription of persons") (quoting Charles DiSalvo); Steve Oleschewsky, *Why We Need the Religious Freedom Peace Tax Fund (H.R. 1186)*, THE TOUCHSTONE, Apr./May 2002, at <http://www.rtis.com/reg/bcs/pol/touchstone/apr02/10.HTM> (last visited Oct. 23, 2003).

⁵ 131 CONG. REC. S19,601 (1985).

⁶ See *supra* notes 1–2 and accompanying text.

⁷ For example, Randy Kehler and Betsy Corner correctly computed and reported their tax liability to the IRS. See Kornhauser, *supra* note 1, at 941. However, instead of paying the amount they owed, they sent the IRS a letter explaining why their beliefs prevented them from funding military programs and activities and placed their tax dollars in a bank account or contributed the money to organizations that promoted peace and helped the poor. *Id.* The couple was severely punished when the IRS subsequently seized and sold their home. *Id.* Randy Kehler refused to leave the home and was ultimately sentenced to a six months in prison. *Id.*; see also *infra* Section III (discussing common methods employed by resisters to avoid funding military endeavors and the penalties assessed against individuals who employ these methods).

⁸ See *infra* Section III.

⁹ See *infra* Section III.

¹⁰ See, e.g., Kornhauser, *supra* note 1, at 941–42 (noting that "people who refuse to pay their taxes for any reason, potentially threaten the viability of the tax system and ultimately the government itself"); see also *infra* notes 99, 184–87 (arguing that implementation of the Religious Freedom Peace Tax Fund would address these concerns by encouraging resisters to pay their tax dollars, and thus, would increase the amount of tax dollars generated by the IRS).

actions deprive the country of resources it needs to ensure its continued existence and dominance in the world.¹¹ However, this situation is not hopeless; rather, the Religious Freedom Peace Tax Fund Act¹² would provide a solution to this problem by accommodating the needs of conscientious objectors while ensuring economic benefit, in the form of increased tax revenues, to the United States.

The purpose of this Note is to demonstrate that the Peace Tax Fund is a constitutionally permissible and practically feasible concept. Section II provides a brief history of conscientious objection within the United States and explores the various ways in which these beliefs have and have not been accommodated over time. Section III explains the current state of conscientious objection and, more specifically, war tax resistance. Section IV lays forth the details of the proposed Religious Freedom Peace Tax Fund Act. Section V demonstrates that the Act is a constitutionally permissive accommodation under the First Amendment. Section VI presents and responds to some of the primary criticisms advanced by opponents of the Act. Finally, Section VII highlights the practicalities associated with implementation of the Fund.

II. HISTORY OF CONSCIENTIOUS OBJECTION IN AMERICA

The reasoning employed to justify exempting conscientious objectors from participation in military endeavors is analogous to the reasoning that can be used to justify creation of the Religious Freedom Peace Tax Fund. It is therefore important to explore the history of conscientious objection in America in order to understand the development of this country's accommodation of conscientious objectors by exempting them from military service.¹³

¹¹ When these individuals withhold their tax dollars, less money is available to fund all government projects, including defense projects. Thus, the resisters' actions have an adverse impact that reaches beyond defense programs to affect all government programs.

¹² The Religious Freedom Peace Tax Fund Act, H.R. 2037, 108th Cong. (2003), available at <http://thomas.loc.gov> (last visited October 23, 2003). Despite the inclusion of the word "Religious" in the title, the Act would enable participation by secular conscientious objectors. *Id.* at § 1. The bill proposes to define "conscientious objector" in the same way that the Selective Service Act defines the term. *Id.* at § 3(a). The Supreme Court extended the ambit of the Selective Service Act by determining that moral, ethical, and religious beliefs can all serve as the basis for conscientious objection. *See infra* notes 50–51.

¹³ See William D. Palmer, *Time to Exorcise Another Ghost from the Vietnam War: Restructuring the In-Service Conscientious Objector Program*, 140 MIL. L. REV. 179, 182 (1993).

A. Pre-Civil War Accommodation

The concept of religious freedom¹⁴ was extremely important to many of this country's earliest inhabitants. The desire to attain this freedom was often an important factor in the decision to immigrate to the United States.¹⁵ Accordingly, legal provisions were in place during colonial times to protect conscientious objectors from having to act in ways that would contradict their beliefs.¹⁶ The majority of colonial governments enacted legislation that served to protect conscientious objectors after 1662.¹⁷ In 1775, the Continental Congress adopted a resolution that recognized the right of conscientious objectors, whose anti-war sentiments were based on religious beliefs, to abstain from service in the state militias.¹⁸ While the resolution exempted conscientious objectors from military service, it also encouraged these individuals to "contribute liberally in this time of national calamity" and to offer whatever services they were able to perform, consistent with their religious principles.¹⁹ Thus, from these earliest days, American forefathers acknowledged that it was possible to accommodate

¹⁴ Over time, it has been recognized that the notion of freedom of religion must be expanded to recognize the freedom of conscience, including the freedom to hold beliefs founded in morals and ethics in addition to religion. See *infra* Section II.E. From a historical standpoint, this freedom of conscience has its beginnings in the notion of freedom of religion, which is why this portion of the Note refers only to the latter.

¹⁵ See Karl D. Nelson, "By Reason of Religious Training and Belief... A History of Conscientious Objection and Religion During the Vietnam War," ch.1 at 4 (1998) (unpublished Honors Senior Project, Western Washington University) (on file with author), <http://members.macconnect.com/users/k/knelson/co/co.html> (last visited Oct. 23, 2003). English Quakers and Russian, Dutch, and German Mennonites were among some of the earliest immigrants to America. *Id.* "All of these groups, hoping to avoid the persecution of their beliefs in Europe, were drawn to America by promises of religious freedom." *Id.* Members of pacifist groups, including Quakers and Mennonites, traveled to the United States to avoid persecution for their pacifist beliefs and to avoid being pressured, and in some cases compelled, to serve in European militaries. See *id.* at 5.

¹⁶ See National Campaign for a Peace Tax Fund, *Background to the Peace Tax Fund*, at <http://www.peacetaxfund.org> (last visited Oct. 23, 2003). For example, some of the colonies accommodated conscientious objectors by exempting them from participation in their militias. See Palmer, *supra* note 13, at 182. In contrast, other colonies did not excuse conscientious objectors from service, but rather, imposed large taxes and fines on those who refused to serve in militias and, in some extreme cases, imprisoned conscientious objectors who refused service. *Id.* However, even in some of these communities, leaders observed that objectors were productive, law-abiding members of the community and thus acknowledged a need to provide them with alternatives to service in the militias, including the provision of care for women, children, and the elderly, and supervision of cattle and other economic goods. See Nelson, *supra* note 15, at 6.

¹⁷ See *Background to the Peace Tax Fund*, *supra* note 16.

¹⁸ See Palmer, *supra* note 13, at 182.

¹⁹ *Id.* (emphasis omitted) (citation omitted).

individuals' consciences in a manner that also left room for the fulfillment of civic responsibilities.²⁰

B. Accommodation during the Civil War

Conscription was used for the first time in American history during the Civil War.²¹ The large numbers of casualties during battles necessitated the constant availability of new soldiers to take their place in the next battles.²² Despite the need for soldiers, "the 1,200–1,500 conscientious objectors²³ were numerically insignificant."²⁴ An exemption of these comparatively few individuals was feasible given that the Union and the Confederacy had amassed armies comprised of greater than two million soldiers.²⁵ In addition, government leaders realized

²⁰ In addition, many of the framers of the Constitution acknowledged the need to accommodate conscientious objectors. A proposed amendment exempting conscientious objectors from military service was discussed during the debates over the Bill of Rights. See Nelson, *supra* note 15, at 7. The proposal was approved in the House of Representatives; however, it was subsequently defeated in the Senate. John Whiteclay Chambers II, *Conscientious Objectors and the American State from Colonial Times to the Present*, in *THE NEW CONSCIENTIOUS OBJECTION: FROM SACRED TO SECULAR RESISTANCE* 23, 29 (Charles C. Moskos & John Whiteclay Chambers II eds., 1993). Scholar Major David M. Brahms has argu[ed] that:

[James] Madison and other defenders of the [conscientious objector] amendment assumed that, despite the Senate elimination of a number of specific amendments, the right of religious conscientious objection would be protected by the first amendment guaranteeing freedom of religion and the ninth amendment guaranteeing the sanctity of those nonenumerated rights retained by the people"

Id. at 29 n.28 (citation omitted).

Despite the bill's defeat in the Senate, sixteen of the states recognized the right to freedom of conscience in resolutions or in their state constitutions and, in some cases, explicitly provided for the right to engage in conscientious objection. *Id.* at 29.

²¹ See Palmer, *supra* note 13, at 183; Nelson, *supra* note 15, at 8.

²² See, e.g., Chambers, *supra* note 20, at 29.

²³ Lillian Schlissel, *Preface to Part III*, in *CONSCIENCE IN AMERICA* 91 (Lillian Schlissel ed., 1968). This figure only includes religious and not secular conscientious objectors because accommodation of "conscientious objectors" during this time period was only extended to draftees whose pacifist beliefs were religiously based. See *Id.*

²⁴ Nelson, *supra* note 15, at 8 (citing Schlissel, *Preface to Part III*, in *CONSCIENCE IN AMERICA* 91). However, as the war continued and the number of casualties increased, the Confederacy became increasingly desperate for manpower. See Schlissel, *supra* note 23, at 90. Jefferson Davis, who had initially been tolerant of conscientious objectors, realized the need to draft a larger number of men into combatant service and thus, greatly limited the number of exemptions granted to conscientious objectors. See *id.*

²⁵ See Schlissel, *supra* note 23, at 91. In contrast to fighting in the Civil War-era, which necessitated large numbers of soldiers, fighting in the modern era is dependant upon technology and the money, including tax dollars, used to attain technological advancements. See *supra* note

that forcing objectors to fight was ineffective because people who are morally opposed to fighting did not make good soldiers.²⁶ Furthermore, leaders in the North and South began to “recognize the sincerity and stubbornness²⁷ of the pacifist religious objectors”²⁸ and to understand that these individuals were not asserting feigned beliefs in an attempt to escape the dangers of combat.²⁹ This increased understanding actually contributed to greater tolerance of conscientious objectors by many government officials.³⁰ In 1864, during the Civil War, the government made the determination to accommodate conscientious objectors by exempting them from combatant military service.³¹

4 and accompanying text. However, just as conscientious objectors made up a comparatively small portion of the population of eligible soldiers, those who are conscientiously opposed to funding military endeavors make up a comparatively small portion of the population of eligible taxpayers. *See infra* notes 161–62. In this regard, implementation of the Peace Tax Fund, like this exemption from combatant service, appears feasible. *See infra* Section VII.

²⁶ *See* Nelson, *supra* note 15, at 9. Similarly, supporters of the Peace Tax Fund assert that in addition to being to be moral and fair, implementation of the Fund would be efficient because it would increase the overall amount of tax dollars collected by the IRS, decrease the funds that the IRS has to allocate to collecting delinquent payments from objectors, and encourage objectors to earn to their full capacity. *See infra* Section VII.

²⁷ For example, drafted conscientious objectors, especially those who refused to provide noncombatant service, were often threatened by their superiors with severe punishments including imprisonment and death when they refused to comply with orders. Diary of Cyrus Pringle, *The Record of a Quaker Conscience*, (1863), in CONSCIENCE IN AMERICA, *supra* note 23, at 102, 107 (Lillian Schlissel ed., 1968). Many times, the conscientious objectors who faced these types of ultimatums elected to go to prison rather than violate their beliefs by following orders. *See id.* at 104. One such objector, Cyrus Pringle, chose to go to prison rather than violate his beliefs; and, in making this decision stated “we cannot purchase life at the cost of peace of soul.” *Id.* at 105. Similarly, many modern war tax resisters are sincere and stubborn in refusing to stray from their beliefs even if that means they risk having serious penalties imposed against them; or, alternatively, that they make the decision to earn incomes below the taxable level. *See supra* notes 7–8 and accompanying text; *infra* Section III.

²⁸ Chambers, *supra* note 20, at 29.

²⁹ *See id.* at 29–30.

³⁰ *See* Nelson, *supra* note 15, at 9. President Lincoln, Edwin Stanton, Secretary of War, and John A. Campbell, Confederate Secretary of War, have been identified as three supporters of conscientious objection during this time period. *See id.*; Schlissel, *supra* note 23, at 89. One historian, John Whiteclay Chambers II, attributes Lincoln’s support, at least in part, to the fact that the majority of conscientious objectors during this time were members of Lincoln’s party, the antislavery Republicans. *See* Chambers, *supra* note 20, at 45. Despite these sources of support, conscientious objectors continued to encounter criticism and even violent reprisal in the form of torture and execution. *See* Nelson, *supra* note 15, at 9.

³¹ Act of Feb. 24, 1864, ch. XIII, § 17, 13 Stat. 6, 9 (1864). The exemption applied to “members of religious denominations, who shall by oath or affirmation declare that they are conscientiously opposed to the bearing of arms, and who are prohibited from doing so by the rules and articles of faith and practice of said religious denominations . . .” *Id.* These individuals were not exempted from the draft. *See* Palmer, *supra* note 13, at 183. However, upon being drafted they were permitted to provide noncombatant service in the form of hospital

C. Accommodation during World War I

A draft was also instituted during World War I.³² American leaders initially adopted a conservative perspective towards conscientious objectors because of their concerns that many of the war's opponents would take advantage of exemptions by falsely claiming conscientious objector status.³³ However, these officials ultimately decided to exempt "all [conscientious objectors] who opposed war in general"³⁴ from combatant service although they continued the trend of requiring an alternative means for satisfying civil responsibilities by requiring objectors to provide noncombatant service.³⁵ Despite this exemption, many of the individuals who were conscientiously opposed to war during this time faced fierce opposition and harsh treatment because of their beliefs.³⁶ As news of this

work or caring for freedmen, or in the alternative, to pay \$300 that was used to care for sick and wounded soldiers and not to fund future battles. *See* Act of Feb. 24, 1864 § 17, 13. Stat. at 9. The provision of this exemption and its accompanying alternatives lends credence to the idea that it is possible to accommodate individuals' consciences in a way that also allows for the fulfillment of civic responsibilities, a theme that permeates American history. *See* Section II.A.

The Confederate Forces also exempted certain conscientious objectors from combatant service, provided that they were able to furnish a substitute soldier to fill their place; or, alternatively, were able to pay a fixed amount of money. *See* Chambers, *supra* note 20, at 30.

³² Nelson, *supra* note 15, at 10.

³³ Chambers, *supra* note 20, at 32. Section 4 of the Selective Service Act of 1917 restricted conscientious objector status to persons who were members of "any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form . . ." Pub. L. No. 65-12, 40 Stat. 76, 78 (1917). The policy of the American government during the first year of the war was to apply this limited exemption, but to pressure exempted individuals to participate in some type of service within the military. *See* Chambers, *supra* note 20, at 33. Newton D. Baker, Secretary of War during World War I, eventually formed a committee to determine whether the beliefs of individuals who adamantly refused military service were sincere. *See id.* at 34. The committee determined that 95% of these individuals had sincerely held anti-war beliefs. *Id.*

³⁴ Chambers, *supra* note 20, at 34.

³⁵ *See* Act of Mar. 18, 1917, Pub. L. No. 65-12, § 4, 40 Stat. 76, 78 (1917); *see also* Palmer, *supra* note 13, at 183. The Act's exemption was limited to conscientious objectors who were members of the "peace churches," and thus, objectors whose anti-war beliefs were based on their religion. *Id.* However, the ambit of the exemption was ultimately widened in order to cover persons who had "personal scruples against war." *See id.* at 184 (quoting Selective Service System, Special Monograph No. 11, Vol. I, CONSCIENTIOUS OBJECTION 29, 55 (1950)).

³⁶ *See* Chambers, *supra* note 20, at 33-35. Drafted conscientious objectors, although exempted from combatant service and relegated to perform noncombatant service, were still under the control of the military. *See id.* at 33. Military commanders often applied relentless pressure on objectors, sometimes in the form of physical pressure, in order to persuade them to participate in combat. *See id.* While some American soldiers were tolerant of the conscientious objectors who provided noncombatant service, others greatly disliked conscientious objectors. *See* Nelson, *supra* note 15, at 11. One officer vocalized his hatred by stating that conscientious objectors were "'enemies of the Republic . . . fakers, and active agents of the enemy.'" *See id.*

poor treatment became public, many Americans argued that government officials had failed to ensure conscientious objectors' ability to exercise their beliefs.³⁷ In addition, conscientious objectors and their supporters realized the need to band together to ensure that this poor treatment did not occur during future wars.³⁸

D. Accommodation during World War II

During World War II, conscientious objectors were subjected to "a more liberal and humane governmental policy" in comparison to, and in part because of, the poor treatment they received during World War I.³⁹ The most predominate feature of this policy was the passage of a draft law that extended conscientious objector status to all religious objectors⁴⁰ and allowed conscientious objectors to

Approximately 400 conscientious objectors who absolutely refused participation in any form of military service were imprisoned during World War I. See *Background to the Peace Tax Fund*, *supra* note 16. In many cases, the harsh treatment did not end with imprisonment. For example, the bodies of two Mennonite brothers who had died from illness in a federal prison were sent home to their families dressed in the military uniforms that the men had been conscientiously opposed to wearing when they were alive. See Chambers, *supra* note 20, at 35.

In addition, during World War I, exemptions based on conscientious objector status were only available to members of "historic peace churches." Nelson, *supra* note 15, at 1. The Anabaptists, the Brethren, and the Quakers were categorized within this group, unlike Protestants, Jews, and Roman Catholics. *Id.* at 2. Consequently, many individuals who were conscientiously opposed to war were unable to qualify for the exemption because they did not belong to one of the peace churches.

³⁷ See Chambers, *supra* note 20, at 35. The repression of conscientious objectors and other wartime dissenters and critics led Americans to fear excessive government interference in their own lives and "made civil liberties a national issue and led to the creation of a major watchdog organization, the American Civil Liberties Union." *Id.*

³⁸ See *id.* Supporters of conscientious objectors acknowledged the likelihood of future wars and, further, that the desire to mobilize large groups of soldiers could lead to another period of suffering and repression for objectors. See *id.* Supporters from a variety of faith-based and secular groups began to work together to ensure that the experience of World War I would not be repeated. See *id.* Rather than focusing on organizations that specifically supported accommodation of conscientious objectors, these groups sought to ally themselves with organizations focused on the promotion of peace and civil liberties, including the American Civil Liberties Union and the War Resisters League. See *id.*

³⁹ *Id.* After learning of the negative experiences of many conscientious objectors during World War I, Americans began to argue that the government had failed to ensure objectors' ability to follow their beliefs. See *supra* Section II.C. This same sentiment continued into the World War II-era and is evidenced by a 1940 survey which reported that approximately 50% of Americans supported the provision of exemptions from military service or the option to engage in noncombatant service for conscientious objectors. See Chambers, *supra* note 20, at 36.

⁴⁰ The statute exempted from combatant service a draftee "who, by reason of religious training and belief is conscientiously opposed to participation in war in any form." Selective Service Act of 1940, Pub L. No. 76-783, § 5(g), 54 Stat. 885, 889 (1940). Previously, this exempt status had only been extended to members of the historic peace churches and thus,

provide civilian alternative service rather than requiring them to serve in the military.⁴¹ However, this legislation did not shield all objectors from poor treatment, including imprisonment, during World War II. Most of the five thousand objectors imprisoned during the War were individuals who were conscientiously opposed to war but failed to meet the statutory definition of conscientious objector.⁴² During World War II and the majority of the Cold War Era, the law's treatment of conscientious objectors remained largely the same as that provided in the 1940 Selective Service Act.⁴³

E. Accommodation during and after the Vietnam War

One historian remarked that “[t]he Vietnam War . . . posed the most dramatic confrontation in American history between the government's demands for military service and objection of individual citizens to war.”⁴⁴ During the

members of other religious sects, including Protestants, Catholics, and Jews, could not achieve conscientious objector status. *See* Chambers, *supra* note 20, at 32.

One group, comprised of pacifists, civil libertarians, and members of various religious groups, had lobbied for an even broader statutory definition of “conscientious objector” which would have extended the exemption to *all* sincere objectors including individuals whose pacifist beliefs were secularly based. *See id.* at 36. Despite their efforts, the definition was not expanded to cover secular conscientious objectors. *See id.* Army officials refused to exempt secular conscientious objectors in part because of the fear that such an exemption “might shelter communists and ‘fifth columnists.’” *Id.* at 36–37.

⁴¹ The draft law provided statutory conscientious objectors with the choice between noncombatant service and the opportunity to do “work of national importance under civilian direction.” Selective Training and Service Act of 1940 § 5(g), 54 Stat. at 889. During World War II, the American armed service was comprised of fifteen million men, the largest it had been in the country's history. *See* Chambers, *supra* note 20, at 37. Ten million of these men had been drafted. *See id.* Fifty thousand draftees qualified as conscientious objectors, the majority of which performed noncombatant service, usually in the form of medical services. *See id.* Twelve thousand “agreed to work without pay on such nonmilitary projects as soil erosion control, reforestation, and agricultural experimentation in one of the seventy Civilian Public Service (CPS) camps.” *Id.* One important difference between CPS camps and camps in which conscientious objectors served during World War I was the fact that the CPS camps were operated by the historic peace churches while the other camps were run by members of the military who often treated objectors harshly. *See id.*; *supra* note 36 and accompanying text. However, many conscientious objectors disfavored CPS camps, and in 1946 use of the camps was eliminated. Conscientious objectors were permitted to provide “individual rather than collective alternative service.” Chambers, *supra* note 20, at 38.

⁴² Among these individuals were secular conscientious objectors and Jehovah's Witnesses whose pacifist beliefs were religiously based, but did not qualify because of their refusal to apply for conscientious objector status, their demand for complete exemption so that they could continue to preach, and their refusal to participate in alternative service. Chambers, *supra* note 20, at 38 n.66.

⁴³ *Id.* at 38.

⁴⁴ *Id.* at 39.

Vietnam War, the number of individuals protesting the draft, and specifically, the number of individuals claiming conscientious objector status, increased.⁴⁵ In addition, a greater number of individuals began to protest the use of their tax dollars to fund military activities and programs,⁴⁶ and a number of organizations were formed to advance their ideas.⁴⁷ The stage was set for major changes to be made in the draft system and more specifically, in the way in which the government regarded and treated conscientious objectors.

Congress enacted the Military Selective Service Act of 1967 to ensure that conscientious objectors would not be compelled under American draft laws to violate their beliefs and participate in war.⁴⁸ The Act provides exemption to "any person . . . who, by reason of religious training and belief, is conscientiously

⁴⁵ See Kornhauser, *supra* note 1, at 954. Historian John Whiteclay Chambers II calculated the ratios of "men classified as conscientious objectors per 100 actual inductees" in the military for each of the wars in which America participated during the twentieth century. *Id.* at 999 n.254. In World War I and II, he estimated that for every 100 actual inductees, 0.14 and 0.15 men, respectively, were classified as conscientious objectors. *Id.* The ratios greatly increase during the Vietnam War. *See id.* In 1967, he calculated that for every 100 actual inductees, 8.1 men were classified as conscientious objectors. *Id.* In 1971 and 1972, Chambers calculated that for every 100 actual inductees, 42.62 and 130.72 men, respectively, were classified as conscientious objectors. *Id.*

Those individuals drafted during the Vietnam War only comprised 16% of the total military at this time. Chambers, *supra* note 20, at 39-40. However, the draftees made up over 50% of the American soldiers that died during battle. *Id.* at 40. The amount of opposition to the war, and specifically to the draft, increased as the number of draftees and the number of casualties increased. *Id.* A draft resistance movement comprised of students, pacifists, religious groups, civil rights advocates, feminists, and other liberal and radical groups surfaced as this opposition grew. *Id.* The growing opposition that occurred as the Vietnam War progressed provides a probable explanation for the increase in Chambers' ratios between 1967 and 1972. *See id.* In addition, the increase in ratios between World War I and II and the Vietnam War and the increase between 1967 and 1972 is attributable to the fact that two important Supreme Court decisions had expanded the definition of "conscientious objector" to encompass secular conscientious objectors provided that their beliefs were morally or ethically based. *See Welsh v. United States*, 398 U.S. 333 (1970); *United States v. Seeger*, 380 U.S. 163 (1965); *see also infra* note 50 and accompanying text.

⁴⁶ Approximately 20,000 individuals protested the use of their tax dollars to fund the War by refusing to pay their income taxes. Kornhauser, *supra* note 1, at 954 n.57. In addition, an estimated 200,000 people protested by withholding payment of their telephone excise taxes. *Id.*

⁴⁷ *Id.* at 954. For example, the National Council for a World Peace Tax Fund and the National War Tax Resistance are two organizations that were formed during the War. *Id.*

⁴⁸ This statute is a relatively modern example of the government making the decision to accommodate conscience. Despite the fact that this statute deals with an exemption from military service, this Note will demonstrate that passage of the Religious Freedom Peace Tax Fund Act is a constitutional and feasible extension of the accommodation provided to conscientious objectors under this statute. *See infra* Sections V, VI, and VII.

opposed to participation in war in any form.”⁴⁹ The statutory language appears to restrict conscientious objector status to individuals whose anti-war beliefs are religiously based. Despite its apparent plain meaning, the Supreme Court has ruled that the Act’s exemption applies to both religious and secular conscientious objectors.⁵⁰ Thus, the document distributed by the Selective Service to individuals seeking the exemption, specifies that the “religious training and belief” language “includes beliefs often thought of as ethical or moral in nature.”⁵¹

III. CURRENT STATE OF CONSCIENTIOUS OBJECTION AND WAR TAX RESISTANCE

As the previous Section indicates, conscientious objectors today are exempt from military service.⁵² However, this accommodation alone is not enough to ensure conscientious objectors the ability to live their lives in a manner consistent with their pacifist beliefs. Rather, every April 15, conscientious objectors are confronted with the difficult choice between remaining true to their beliefs by refusing to pay taxes used to fund war, or fulfilling their civic duty to pay taxes, and thereby violating their consciences.⁵³

War tax resisters’ discontent with the use of their tax dollars has increased as the amount of money allocated to military spending has increased.⁵⁴ The amount

⁴⁹ The Military Selective Service Act of 1967, 50 U.S.C. app. § 456(j) (1964 ed., Supp. V).

⁵⁰ See *United States v. Seeger*, 380 U.S. 163, 176 (1965) (holding that demonstration of a belief in god is not needed to attain conscientious objector status provided that a “sincere and meaningful belief” that is “parallel to that filled by . . . God” can be demonstrated); *Welsh v. United States*, 398 U.S. 333 (1970) (concluding that conscientious objector status is available to individuals whose anti-war beliefs are based in ethics or morals).

⁵¹ HANDBOOK FOR CONSCIENTIOUS OBJECTORS 49 (Arlo Tatum ed., 12th ed. 1972). The Selective Service also emphasizes that “a man’s reasons for not wanting to participate in a war must not be based on politics, expediency, or self-interest. In general, the man’s lifestyle prior to making his claim must reflect his current claims.” Selective Service System, *Fast Facts: Conscientious Objection and Alternative Service*, at <http://www.sss.gov/FSconsobj.htm> (last visited Oct. 23, 2003). Under the current system, an individual who qualifies for conscientious objector status can be assigned to an “Alternative Service” job or will serve a noncombatant function within the military. *Id.*

⁵² See *supra* notes 39–41 and accompanying text.

⁵³ Some conscientious objectors make the decision to pay their taxes rather than to resist payment. However, this Section focuses on the actions of objectors who do resist payment and the penalties assessed against them because of this resistance.

⁵⁴ See, e.g., National Campaign for a Peace Tax Fund, *Sample Letter to Editor*, at <http://www.peacetaxfund.org> (last visited Oct. 23, 2003) (“Debate in Washington, D.C. centers on tax cut percentages [and trillion dollar surpluses], yet little attention is paid to the gluttony of military spending which is an affront to many conscientious objectors and peace activists around the nation.”); Kierans, *supra* note 43, at 10 (emphasizing the “damage” caused by

of money allocated to military programs and activities by the Federal Budget for Fiscal Year 2003, \$369 billion, represents the largest increase in military spending in twenty years.⁵⁵ The United States' military budget is far greater than that of any other nation in the world.⁵⁶ Thus, the United States not only allocates a much larger amount of money to fund its military than any other country in the world, but it has also chosen to increase this amount of funding.⁵⁷ In terms of spending, an estimated seventeen percent of tax dollars will be spent on national defense during fiscal year 2003.⁵⁸ In addition, more than half of American tax dollars are

average Americans' tax dollars as the amount of tax revenues allocated to fund the military increases and urging taxpayers to "object to violence in [their] name[s]" and "to claim [their] right to make a living as . . . peaceful human being[s] in good conscience").

In addition to lobbying for allocation of their tax dollars to fund non-military programs, some conscientious objectors also seek to decrease overall military spending. See, e.g., *Advantages of a Peace Tax Fund*, at <http://www.peacetaxfund.org> (last visited Oct. 23, 2003). "The Peace Tax Fund Bill would be a meaningful step towards raising the national consciousness about misplaced military priorities. The level of usage of the Peace Tax Fund would be reported by Congress each year, and would serve as a measure of the nation's conscience regarding the inhumanity of war." *Id.* However, the increase in the proportion of total tax revenues used to fund the military is alarming to all conscientious objectors because it makes the payment of taxes feel like an even greater violation of their consciences. See, e.g., Kierans, *supra* note 43, at 1, 10. The purpose of this Note is not to argue in favor of decreasing military spending. Rather, the Note focuses upon and supports the accommodation of conscientious objectors' beliefs through the enactment of the Religious Freedom Peace Tax Fund Act. See *infra* Section IV. The references to the United States' military budget are provided solely as background information.

⁵⁵ Office of Management and Budget, *Fiscal Year 2003 A Citizen's Guide to the Federal Budget 7*, available at <http://www.mop-shop.org/Budget/cguide.pdf> (last visited Oct. 23, 2003) [hereinafter *Citizen's Guide*]. The increase represents a twelve-percent increase. *Id.* In addition, "if the war against terrorism requires it," \$10 billion more will be allocated for military spending. *Id.* The Bush Administration is requesting \$399.1 billion to fund the military in fiscal year 2004. National Campaign for a Peace Tax Fund, *Your Tax Dollars at Work*, at <http://www.peacetaxfund.org> (last visited Oct. 23, 2003) (quoting the Center for Defense Information).

⁵⁶ Christopher Hellman, Center for Defense Information, *Last of the Big Time Spenders: U.S. Military Budget Still the World's Largest, and Growing*, February 4, 2002, at <http://www.cdi.org/issues/wme/spendersFY03.html> (last visited Oct. 23, 2003) (comparing other nations' military budgets from 2001 to the Bush Administration's 2003 budget request, \$396.1 billion). For example, Russia, the country that allocates the second greatest amount to fund its military, budgets \$60 billion for this cause, only one-sixth the amount that the United States budgets to fund its military. *Id.* In addition, recent figures show that the United States military budget is greater than the combined budgets of the twelve countries whose allocations are closest to the American military budget. *Id.* Hellman demonstrates that the twelve closest countries' (including Russia, China, Japan, United Kingdom, France, and Germany) combined budgets totaled approximately \$310.7 billion as compared to the United States' \$396.1 billion. *Id.*

⁵⁷ See Kierans, *supra* note 43, at 1.

⁵⁸ *Citizen's Guide*, *supra* note 55, at 4.

utilized for the funding of current and passed wars.⁵⁹ The Bush Administration intends to spend \$2.7 trillion to fund military programs and activities over the next six years.⁶⁰

Conscientious objectors voice their discontent with this use of tax dollars to fund the military in a multitude of ways. In 1990, the National War Tax Resisters Coordinating Committee approximated that between 10,000 and 20,000 Americans withheld a portion of their tax dollars because they could not in good conscience allow their tax dollars to be used to fund military endeavors.⁶¹ In addition, thousands of individuals are estimated to have made the decision to earn incomes below the taxable level⁶² in order to avoid the choice between following their beliefs and following the law.⁶³

Such protestors often face great punishments for their objection. For example, some have penalties assessed against them by the Internal Revenue Service (IRS) and others are sentenced to jail time.⁶⁴ Penalties are assessed and interest is charged to individuals who owe taxes but fail to file, and to individuals who file

⁵⁹ *Marketplace*, *supra* note 3 (comments of Karl Manheim).

⁶⁰ *Your Tax Dollars at Work*, *supra* note 55. President Bush contends that after September 11, 2001, an increased amount of money must be allocated to fund the military, in his words, to “pay the cost of war and the price of transforming our Cold War military into a new 21st Century fighting force,” and to fund programs implemented by the Office of Homeland Security. *Citizen’s Guide*, *supra* note 55, at 1.

⁶¹ Kornhauser, *supra* note 1, at n.75. The National War Tax Resisters Coordinating Committee reached this conclusion based on a survey it conducted, information gathered from other organizations, and its own mailing list. *Id.*

⁶² According to Steve Oleshewsky, an income of less than \$600 per month would fall below the taxable level. *See* Oleshewsky, *supra* note 4. He cites as an example a medical doctor in Austin, Texas, who has “rented a small house, in an impoverished neighborhood, with a roommate and no real furniture for about 20 years rather than allow one penny she has earned helping people to be used for hurting people.” *Id.*

⁶³ *See, e.g., Marketplace*, *supra* note 3; *Background to the Peace Tax Fund*, *supra* note 16.

⁶⁴ *See Background to the Peace Tax Fund*, *supra* note 16. For example, Richard Ralston Catlett, a Quaker pacifist, failed to file his tax returns and to pay his taxes and the corresponding penalties and interest that had accumulated. As a result, the IRS seized his business. Kornhauser, *supra* note 1, at 941 n.6. Even after the seizure, Catlett refused to file his tax returns and withheld tax payments. *Id.* Subsequently, he was imprisoned for two months and placed on three years of probation after being convicted of willful and knowing failure to file. *Id.*

The IRS has put liens on Timothy Pearce’s property several times since he began to resist paying his taxes in their entirety. Timothy Pearce, *Peace Tax*, TRIBUNE REVIEW, June 29, 2002, available at <http://library.triblive.com/interconnect/intercon.dll> (last visited Oct. 23, 2003). Despite these penalties, Pearce continues to resist and states, “[o]f course, the threats of property seizure and jail are scary, but my fear must be so much less than what people feel in countries that are being bombed with weapons paid for by U.S. tax dollars.” *Id.*

but fail to pay the full amount of the taxes that they owe.⁶⁵ Some conscientious objectors pay the amount of taxes they owe less the amount that they calculate would be allocated to fund military programs.⁶⁶ These individuals often donate that amount to a charity or other non-military organization and include a receipt or other document in their tax return explaining to the IRS why they have withheld this money and what they have opted to do with these funds.⁶⁷

Individuals, including conscientious objectors, who file on time but fail to pay the full amount of the taxes owed are required to pay a penalty, which amounts to "one-half of one percent of the tax owed for each month, or part of a month, that the tax remains unpaid from the due date, up to 25 percent."⁶⁸ In addition, courts have consistently labeled objectors' claims that they are entitled to conscience deductions or credits on their tax returns as "frivolous,"⁶⁹ and have permitted the IRS to assess a \$500 civil penalty against these individuals for filing frivolous income tax returns.⁷⁰ Individuals, including conscientious objectors,

⁶⁵ I.R.S., Department of the Treasury, *Topic 653—IRS Notices and Bills, Penalties and Interest Charges*, THE DIGITAL DAILY, available at <http://www.irs.ustreas.gov/taxtopics> (last visited Oct. 23, 2003).

⁶⁶ See Ronald B. Flowers, *Government Accommodation of Religious-Based Conscientious Objection*, 24 SETON HALL L. REV. 695, 714 (1993).

⁶⁷ See *id.* at 715; Kornhauser, *supra* note 7 and accompanying text (telling the story of Randy Kehler and Betsy Comer, two conscientious objectors who sent in their tax returns with a letter explaining that they had decided to contribute their tax dollars to charitable and peace-promoting organizations rather than pay them to the federal government).

⁶⁸ *Topic 653—IRS Notices and Bills*, *supra* note 65. If ten days pass after the IRS issues an intent to levy against these individuals and they continue to withhold the delinquent amount, this rate increases to one percent. *Id.*

⁶⁹ The Internal Revenue Code provides for the assessment of a \$500 penalty if:

(1) any individual files what purports to be a return of the tax imposed by subtitle A but which—

(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

(2) [This conduct] is due to—

(A) a position which is *frivolous* . . .

26 U.S.C. § 6702(a) (2000) (emphasis added).

⁷⁰ See, e.g., *Welch v. United States*, 750 F.2d 1101 (1st Cir. 1985) (emphasizing that the taxpayer's position was frivolous because no provision is made within American law for a credit or deduction based on taxpayers' opposition to the use of tax dollars to fund military programs and activities); *Harper v. United States*, 587 F. Supp. 1056 (E.D. Pa. 1984); *Drefchinski v. Regan*, 589 F. Supp. 1516 (W.D. La. 1984); John W. Wright, Note, *Taxation: Frivolous Tax Litigation: Pecuniary Sanctions Against Taxpayers and Their Attorneys*, 39

who owe taxes but fail to file on time are charged a late penalty, which amounts to:

[F]ive percent of the tax owed for each month, or part of a month that [their] return is late and the tax is unpaid, up to five months. The late file penalty continues at 5% a month up to 25% on unpaid amounts. If [their] return[s] [are] over 60 days late, the minimum penalty for late filing is the smaller of \$100 or 100 percent of the tax owed.⁷¹

The amount of interest charged to individuals who fail to pay their income taxes is assessed at a rate that equals the federal short-term rate plus three percent.⁷² The amount of interest is compounded daily and continues to increase until the delinquent taxpayer has paid the full amount of the taxes, penalties, and interest charges owed.⁷³ Individuals who continue to withhold their tax dollars are contacted by the IRS and asked to voluntarily pay the full amount owed.⁷⁴ Failure to do so enables the IRS to act by filing a lien against these individuals' property, which provides the IRS with a legal right to the individuals' property as security or payment for the amount owed, or by serving a levy on these individuals' property or salary, which enables the IRS to take the property in full satisfaction of the amount they owe.⁷⁵

These collection actions often have an extremely adverse impact upon individuals' lives.⁷⁶ One conscientious objector, Patricia Washburn, withheld \$4000 of the amount of tax dollars she owed and donated it to non-military

OKLA. L. REV. 156, 160 (1986) (noting that "[m]oral or social objection to the payment of tax, regardless of the basis on which presented to the courts, has been deemed frivolous.").

⁷¹ *Topic 653—IRS Notices and Bills*, *supra* note 65.

⁷² *See id.* The IRS re-calculates this interest rate every three months. *See id.* As a general rule, the amount of interest owed by a tax dollar can never be waived, even if the taxpayer claims that she has reasonable cause for her tardiness. *See id.*

⁷³ *See id.*

⁷⁴ Internal Revenue Service, United States Department of Treasury, *What You Should Know About the IRS Collection Process*, Publication 594, at 5, 7, available at <http://www.irs.ustreas.gov/pub/irs-pdf/p594.pdf> (last visited Oct. 23, 2003) [hereinafter *Collection Process*].

⁷⁵ *See id.*; *see also* Kornhauser, *supra* note 64 and accompanying text (telling the story of a Quaker Pacifist whose business was seized after he failed to pay his income taxes and the interest and penalties that had been assessed against him).

⁷⁶ *See, e.g., Collection Process*, *supra* note 74, at 7. Liens can hurt credit ratings making it difficult, if not impossible, to attain loans or be approved for leases and credit cards. *Id.* at 7. A levy enables the IRS to seize and sell property, including homes and cars, and to seize items including salaries, funds held in bank accounts, and accounts receivables. *Id.* at 7. Some items cannot be seized via IRS levies. *Id.* at 10. These include workmen's compensation, child support payments, unemployment benefits, household items up to \$6,780, some articles of clothing, and books used at school. *Id.* at 10.

programs.⁷⁷ Interest and other penalties were assessed against Washburn, which caused the \$4000 to increase to \$24,000 over time.⁷⁸ Washburn was unable to satisfy this debt, and thus, the IRS repossessed her car and she was forced to sell her home.⁷⁹ Washburn was aware that the IRS would eventually receive their \$4000.⁸⁰ By re-directing this amount from her tax payment she hoped to be taken to court where she could explain the reasons for her decision to withhold the amount.⁸¹ She never thought that her attempt to voice her opinion would result in the loss of her home.⁸² However, this experience has not prompted Washburn to pay income taxes; rather, she has made the decision to earn an income below the taxable level so that she can legally avoid the obligation to pay taxes.⁸³

IV. SUBSTANCE OF THE RELIGIOUS FREEDOM PEACE TAX FUND ACT

In 1958, for the first time, a bill was introduced in Congress that provided for a peace tax fund.⁸⁴ The bill, if enacted, would have enabled taxpayers to gain a tax credit of no more than two percent if they donated money to the fund.⁸⁵ The money in the fund would have been used to assist poor nations throughout the world.⁸⁶ The origins of House Bill 2037, the current version of the Religious

⁷⁷ *Marketplace*, *supra* note 3.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Marketplace*, *supra* note 3.

⁸³ *Id.* Former U.S. Senator Hatfield observed that Washburn actively supported and worked to advance enactment of the Religious Freedom Peace Tax Fund Act. *Statements on Introduced Bills and Joint Resolutions*, 140 CONG. REC. S7763 (1994) (statement of Sen. Hatfield). Hatfield concluded from this that Washburn “[c]learly . . . wants to pay her taxes in full.” *Id.* This fact, taken in conjunction with her decision to live in poverty, makes it evident that Washburn’s focus was not to break the law, but rather to protest what she perceived as the government’s attempt to compel her to violate her conscience. *See Marketplace*, *supra* note 3. Many objectors like Washburn “believe that supporting military service through taxation is no different than fighting in war; each are equally unacceptable morally.” *Introduction of Bills and Joint Resolutions and Statements on Introduced Bills and Joint Resolutions*, 137 CONG. REC. S6,623 (1991) (comments of Sen. Hatfield). Thus, Washburn made the *only* decision that she could—the decision not to violate her conscience.

⁸⁴ Kornhauser, *supra* note 1, at 985–86.

⁸⁵ *Id.* at 986.

⁸⁶ *Id.* The most current form of the Religious Freedom Peace Tax Fund Act does not propose a tax credit in exchange for a donation to the Fund. *See* H.R. 2037, 108th Cong. (1st Sess. 2003), introduced May 8, 2003, *available at* <http://thomas.loc.gov> (last visited Oct. 23, 2003). Rather, the current bill would place conscientious objectors’ tax dollars into the Fund and subsequently, the money from the Fund would be used to fund non-military programs and activities. *See infra* Section IV.B.

Freedom Peace Tax Fund Act, can be traced back to the World Peace Tax Fund Bill, which was introduced in the House of Representatives for the first time in 1972.⁸⁷ A similar piece of legislation has been proposed in each Congress since 1972.⁸⁸

A. *Who Qualifies as a Conscientious Objector?*

The Act defines a conscientious objector using the same criteria as the Military Selective Service Act.⁸⁹ Consequently, the Act would apply to “a taxpayer who is opposed to participation in war in any form based upon the taxpayer’s deeply held moral, ethical, or religious beliefs or training . . .”⁹⁰ These individuals would then be required to “certif[y] these beliefs in writing to the Secretary of the Treasury in such form and manner as the Secretary provides.”⁹¹

The Act does not cover individuals who are opposed to particular wars as opposed to all war, individuals who raise political objection to the United States’ fiscal policies in general or more specifically, military spending, and individuals who selectively object to nuclear war or any war that could potentially become nuclear war.⁹² Commentator Karl Manheim laments that the Act will open the

⁸⁷ Kornhauser, *supra* note 1, at 986.

⁸⁸ *Id.* The most current version of the Act, H.R. 2037, was introduced in the House and subsequently referred to the House Committee on Ways and Means. See National Campaign for a Peace Tax Fund, *Sample Letter to U.S. Senator*, at <http://www.peacetaxfund.org> (last visited Oct. 23, 2003). Representative John Lewis sponsored the Act and thirty-one other representatives served as co-sponsors for the Act. *Id.* The bill has not been introduced in the Senate. *Id.*

As its reoccurring introduction into Congress illustrates, no version of the bill has ever become law. In addition, Congress chose to take testimony about the bill only three times: in 1976, 1992, and 1995. See Kornhauser, *supra* note 1, at 989. In 1976, a panel of individuals testified about the World Peace Tax Fund during public hearings, and in 1992, the House held extensive hearings during which a wide variety of supporters and critics testified as to the bill’s merits. *Id.* In 1995, the House Ways and Means Committee held less extensive hearings during which a variety of proposed tax reforms, including the bill, were discussed. *Id.*

⁸⁹ See, e.g., H.R. 2037 § 3(a); National Campaign for A Peace Tax Fund, *Your Beliefs and Military Taxes*, at <http://www.peacetaxfund.org> (last visited Oct. 23, 2003). The following are questions, based on Selective Service Forms, that must be answered before an individual can attain the status of conscientious objector: “Describe the beliefs which are the basis for your claim as a [conscientious objector]”; “Describe how you acquired these beliefs”; “Describe how your beliefs affect the way you live and the type of work you do.” *Id.*

⁹⁰ H.R. 2037 § 3(a).

⁹¹ *Id.*

⁹² See generally H.R. 2037. The Supreme Court has concluded that the conscientious objector exemption in the Selective Service Act does not apply to those who object to only a particular war; rather, the Act applies to those who oppose participation in all wars. See *Gillette v. United States*, 401 U.S. 437, 447 (1971).

floodgates by prompting individuals, whose beliefs lead them to protest a particular war or object to certain ways in which military funds are spent, to demand accommodation for their beliefs.⁹³ The definition of conscientious objector contained in the Religious Freedom Peace Tax Fund Act addresses Manheim's concern by utilizing the same definition as the Selective Service Act, thereby refusing coverage to those who object to particular wars rather than participation in all war, and those who raise political objection to military spending programs.⁹⁴

B. *Where Will the Money Go?*

Enactment of the Religious Freedom Peace Tax Fund Act would not relieve conscientious objectors of their duty to pay taxes.⁹⁵ The total amount of taxes paid by these individuals would not change; rather, the way in which these dollars are spent would be altered.⁹⁶ The Act proposes to amend the Internal Revenue Code so that conscientious objectors' income, estate, and gift taxes would be utilized solely for non-military purposes.⁹⁷ The Act would create the Religious Freedom Peace Tax Fund, a trust fund within the United States' Treasury, where the full amount of conscientious objectors' tax dollars would be placed.⁹⁸ The Secretary of the Treasury would determine the way in which conscientious objectors' tax dollars would be deposited into the Fund.⁹⁹ The Treasury would

⁹³ See *Marketplace*, *supra* note 3 (comments of Karl Manheim). Manheim asks:

Can you imagine if a group of Muslims decided they didn't want their tax dollars going to support foreign aid or military aid to Israel or a group of Jews, saying they didn't want our dollars going to military or foreign aid for the Arab countries [based on their deeply held religious beliefs]?

Id.

⁹⁴ In terms of Manheim's example at note 93, the group of Muslims that objects to the use of their tax dollars as military funding or foreign aid for Israel would not be covered under the Religious Freedom Peace Tax Fund Act, because these individuals do not meet the bill's definition of conscientious objectors.

⁹⁵ See e.g., *Statements on Introduced Bills and Joint Resolutions*, 131 CONG. REC. S19,601 (1985) (statement of Sen. Hatfield). Senator Hatfield noted that enactment of the Religious Freedom Peace Tax Fund Act would "not serve to lessen tax burdens for a specialized interest group, but instead allow[] people who are barred by their conscience to pay Federal taxes to once again join the ranks of law-abiding citizens." *Id.*

⁹⁶ H.R. 2037; See also *Background to the Peace Tax Fund*, *supra* note 16.

⁹⁷ H.R. 2037 § 4(a); See also *Background to the Peace Tax Fund*, *supra* note 16.

⁹⁸ H.R. 2037 § 4(a).

⁹⁹ *Id.* The text of the Bill provides that the money will be deposited "in a manner that minimizes the cost to the Treasury and does not impose an undue burden on such taxpayers." *Id.*

then allocate the money within the Fund to any non-military purpose.¹⁰⁰ The following activities and programs are deemed military purposes under the Act, and thus would no longer be funded by conscientious objectors' tax dollars if the Act becomes law:

[T]he Department of Defense; the Central Intelligence Agency; the National Security Council; the Selective Service System; activities of the Department of Energy that have a military purpose; activities of the National Aeronautics and Space Administration that have a military purpose; foreign military aid; and the training, supplying, or maintaining of military personnel, or the manufacture, construction, maintenance, or development of military weapons, installations, or strategies.¹⁰¹

The Act also provides that any growth in the revenue amassed by the United States Treasury as a result of the implementation of the Fund "shall be allocated in a manner consistent with the purposes of the Fund."¹⁰²

¹⁰⁰ *Id.* In contrast, H.R. 1402, a version of the Bill introduced in Congress during 1995, would have enabled conscientious objectors to "appropriate the peace tax funds to programs including the supplemental food program for women, infants and children (WIC), Head Start, the United States Institute of Peace, and the Peace Corps." Nancy C. Staudt, *Taxation Without Representation*, 55 TAX L. REV. 555, 569 (2002).

Furthermore, it is important to emphasize that "[t]he Treasury [would have] distribute[d] the funds in accordance with congressional appropriations" and that "[t]otal appropriations to the military as well as to nonmilitary programs [would] have not changed at all." Kornhauser, *supra* note 1, at 988. Kornhauser made these comments in reference to the 1999 version of the bill; however, these comments equally apply to H.R. 2037, the 2003 version of the bill, because the language of these two bills is identical. *See* H.R. 1454, 106th Cong. (1999); H.R. 2037, 108th Cong. (2003). The following example illustrates that total military appropriations would not have been altered if the bill had been enacted:

Assume that there are only two taxpayers, A and B, each paying \$100 in taxes. Also assume that thirty percent of the budget goes to the military. Without the peace tax fund, \$60 will go to the military (presumably \$30 from each taxpayer), and \$140 will go to nonmilitary spending (\$70 from each taxpayer). If A directs that her tax dollars should go to the peace tax fund, the Treasury still receives \$200 total with \$60 going to the military and \$140 to nonmilitary expenditures. The only difference is that \$60 of B's money goes to military, leaving only \$40 of her taxes for nonmilitary expenditures because all of A's tax dollars go to nonmilitary spending.

Id.

¹⁰¹ National Campaign For a Peace Tax Fund, *There Ought to be a Law*, at <http://www.peacetaxfund.org> (last visited Oct. 23, 2003).

¹⁰² H.R. 2037 § 4(d).

V. CONSTITUTIONALITY OF THE PEACE TAX FUND

A. *The Peace Tax Fund is Not a Constitutionally Mandated Accommodation*

The majority of war tax resisters have unsuccessfully defended their position by arguing that the income tax violates their First Amendment right to free exercise of religion.¹⁰³ By forcing them to pay a tax that is used to fund military endeavors and subsequently requiring them to pay penalties and accrued interest when they fail to pay this tax, conscientious objectors argue that the government is depriving them of their rights to freely exercise their religion and conscience.¹⁰⁴

Despite the frequency with which these claims are made, challenges to tax based on the Free Exercise Clause usually fail.¹⁰⁵ Courts have broadly¹⁰⁶ interpreted Congress's constitutionally granted power "[t]o lay and collect Taxes, Duties, Imposts and Excises"¹⁰⁷. Great deference is granted to statutes dealing with revenue because of the recognition that the continued existence of the government depends upon generation of revenue via a sound system of taxation.¹⁰⁸

For similar reasons, courts usually defer to Congress's power to tax when a First Amendment challenge is waged against it.¹⁰⁹ The Supreme Court has

¹⁰³ See Flowers, *supra* note 66, at 695; Kornhauser, *supra* note 1, at 960. In addition, objectors have unsuccessfully asserted claims based on the Religious Freedom and Restoration Act of 1993 by arguing that passage of this Act evinced a Congressional desire to craft accommodations for conscientious objectors' beliefs within the income tax laws. See Kornhauser, *supra* note 1, at 960, 967-72 (discussing claims based on the Religious Freedom and Restoration Act of 1993 and the courts' responses to these claims).

Conscientious objectors have also argued, unsuccessfully, that payment of income tax violates their "international human rights to freedom of thought, conscience, and religion." *Id.* at 960. (Kornhauser notes that the most common of these international law claims argues that paying taxes, and thus, funding the government's military endeavors, indirectly "subject[s] them to individual liability for war crimes," and cites examples of cases in which these claims have been asserted, and explains the reasons that courts have used to deny these claims.). *Id.* at 973-82; see also Rosa Covington Packard, *Letter from the UN, in PEACE TAX FUND QUARTERLY UPDATE*, Issue 1, at 11 (2002) ("The United States courts have not yet . . . admitt[ed] arguments that the United Nations has recognized conscientious objection as a human right.").

¹⁰⁴ See Kornhauser, *supra* note 1, at 961.

¹⁰⁵ *Id.* at 962.

¹⁰⁶ Kornhauser, *supra* note 1, at 963.

¹⁰⁷ U.S. CONST. art. I, § 8.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* However, in a few cases, the Supreme Court has struck down tax statutes as unconstitutional under the First Amendment. See, e.g., *Murdock v. Pennsylvania*, 319 U.S. 105, 112 (1943). However, the situation in *Murdock* was unique because the tax statute at issue

determined that the government has the right to require employers to withhold social security taxes from their employees' earnings and to require employers to pay the employer portion of social security taxes even though such payments conflict with some employers' religious beliefs.¹¹⁰ In *United States v. Lee*, the Court stated that limitations on religious freedom are constitutional when they are "essential to accomplish an overriding governmental interest."¹¹¹ The Court identified an overriding governmental interest in upholding a uniform system of taxation in order to provide the country with needed revenues and specifically, in the context of the social security tax, revenues needed for a "comprehensive insurance system with a variety of benefits available to all participants"¹¹² The Court also noted that Americans possess a wide variety of distinct religious beliefs.¹¹³ Making accommodations for these beliefs within the tax system would be a very onerous task, one that courts state would undermine the ability of the tax system to function.¹¹⁴ Consequently, the Court concluded that "[t]o maintain an organized society . . . some religious practices [must] yield to the common good."¹¹⁵ In communicating this conclusion, the Court noted that paying social

imposed a limited, specific tax and application of that tax jeopardized the constitutional right to free speech in addition to the right to free expression. *Id.*

¹¹⁰ *United States v. Lee*, 455 U.S. 252, 261 (1982). *Lee* is applied in almost all income tax cases to uphold tax statutes. See Kornhauser, *supra* note 1, at 963.

¹¹¹ *Lee*, 455 U.S. at 257–58. In *Lee*, an Amish employer argued that his adherence to the requirements of the Social Security System would violate his religious beliefs, which "prohibit[] the acceptance of social security benefits, but also bar[] all contributions by the Amish to the social security system." *Id.* at 255. Requiring him to comply with these regulations would constitute a violation of his rights under the Free Exercise clause. *Id.* at 254–56. The Court concluded that the requirements of the social security system do, in fact, interfere with the ability of the Amish to exercise their religious beliefs. *Id.* at 257. However, the Court emphasized that the inquiry does not end here but continues in order to determine whether "an overriding governmental interest" exists to justify this interference with religious freedom. *Id.* at 257–58.

¹¹² *Id.* at 258.

¹¹³ *Id.* at 259.

¹¹⁴ *Id.* at 260.

¹¹⁵ *Id.* at 259. However, in his concurring opinion, Justice Stevens took a different view. He stated, "[t]he Court overstates the magnitude of [the risk of making an accommodation in this case] because the Amish claim applies only to a small religious community with an established welfare system of its own." *Id.* at 262 (Stevens, J., concurring). "The Amish claim is readily distinguishable from the typical claim . . . [I]n the typical case the taxpayer is not in any position to supply the government with an equivalent substitute for the objectionable use of his money." *Id.* at 262 n. 1 (Stevens, J., concurring). Justice Stevens' basic rationale can be utilized in support of the Religious Freedom Peace Tax Fund Act. In lobbying for enactment of the Act, its supporters, like the Amish in *Lee*, provide the government with an "equivalent substitute," the creation of a Fund into which all qualifying objectors' tax dollars shall be placed and subsequently, from which only non-military programs and activities will be funded. See *supra* Section IV.

security taxes is not fundamentally different from paying income taxes.¹¹⁶ Specifically, the Court cited the example of individuals with anti-war beliefs and stated that the tax system could not be maintained if such individuals were allowed to challenge it because revenues were used to fund war-related endeavors.¹¹⁷

The courts continue to cite *Lee* in their denials of challenges on the tax system which are based on the Free Exercise Clause.¹¹⁸ The Supreme Court has gone so far as to state that even a *substantial* burden on the freedom of exercise is justified by the overriding public interest in maintaining a uniform system of taxation, one that does not accommodate the wide variety of religious beliefs held by Americans.¹¹⁹ The Court instituted a new standard in the context of these cases when it stated that the Free Exercise Clause “does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general

¹¹⁶ *United States v. Lee*, 455 U.S. 252, 260 (1982); *see infra* note 119 and accompanying text (discussing the *Hernandez* case, in which the Court squarely addresses a constitutional challenge to a provision in the federal income tax code).

¹¹⁷ *Lee*, 455 U.S. at 260.

¹¹⁸ Kornhauser, *supra* note 1, at 965–66.

¹¹⁹ *See, e.g., Hernandez v. Comm’r*, 490 U.S. 680, 699–700 (1989). In *Hernandez*, members of the Church of Scientology sought to deduct payments that they had made to branches of the Church for “auditing” and spiritual training as charitable contributions on their federal income tax returns. *Id.* at 684–86. These individuals argued that failure to recognize these payments as charitable contributions constituted a violation of the Free Exercise Clause by “placing a heavy burden on the central practice of Scientology.” *Id.* at 698 (citation omitted). The Court cited *Lee* in holding that failure to allow deduction of these payments as charitable contributions did not violate the Free Exercise Clause. *Id.* at 698–700. The Court doubted that the failure to allow these deductions constituted a substantial burden because “[t]his burden is no different from that imposed by any public tax or fee; indeed, the burden imposed by the denial of the ‘contribution or gift’ deduction would seem to pale by comparison to the overall federal income tax burden on an adherent.” *Id.* at 699 (citation omitted). However, the Court emphasized that any burden, even a heavy one, would be justified by the “‘broad public interest in maintaining a sound tax system,’ free of ‘myriad exceptions flowing from a wide variety of religious beliefs.’” *Id.* at 699–700 (citation omitted). The Court reasoned that making an exception in this specific case would open the floodgates to a multitude of requests for other exceptions based on religious beliefs. *See id.* at 700. If exceptions occurred in all these cases, the ability of the government to maintain the country’s system of taxation would be significantly undermined. *Id.*

The Court also labeled as immaterial the fact that *Lee* involved the Social Security System, while this case dealt with federal income taxes. *See id.* at 700. The government’s interest in refusing an exception in this case may actually be stronger than in *Lee* because the exception sought in this case “stems from the contention that an incrementally larger tax burden interferes with their religious activities,” whereas “the claimed exemption in *Lee* stemmed from a specific doctrinal obligation not to pay taxes” *Id.* According to the Court, a floodgate problem would be more likely if exceptions were permitted in every situation in which a group made a claim like the one raised in *Hernandez*. *See id.*

applicability”¹²⁰ In *Smith*, the Court stated that application of strict scrutiny analysis should be limited to cases in which some other right, in addition to the right of free exercise, is implicated.¹²¹

The Supreme Court has concluded that the Constitution does not mandate accommodation of war tax resisters’ claims under the Free Exercise Clause. However, this does not preclude Congress from creating legislation that would provide this accommodation as long as that legislation does not violate the Establishment Clause.¹²² The Supreme Court has approved of, and even endorsed, these permissive accommodations based on its conclusion that such accommodations are virtual necessities in a society characterized by religious freedoms.¹²³ Congress has utilized its power to create permissive accommodations on many occasions.¹²⁴ Consequently, the inquiry into the constitutionality of the Fund should not end here; thus, the next section will consider whether this permissive accommodation under the Free Exercise Clause violates the Establishment Clause of the First Amendment.

B. The Peace Tax Fund is a Constitutionally Permissive Accommodation

The Religious Freedom Peace Tax Fund Act does not violate the Establishment Clause.¹²⁵ The reasons that can be offered in support of this conclusion are similar to the reasons that the Supreme Court advanced in *Gillette v. United States*¹²⁶ to reach the conclusion that the conscientious objector exemption contained in the Military Selective Service Act does not violate the Establishment Clause of the First Amendment.¹²⁷

¹²⁰ Dep’t. of Human Resources v. Smith, 494 U.S. 872, 879 (1990) (citing *Lee*, 455 U.S. 252, 263 n.3 (1982) (Stevens, J., concurring)). Scholars argue that institution of a new standard does not undermine the viability of the *Lee* decision and support this argument by asserting that the *Smith* decision, as well as other decisions in the area of tax and non-tax areas, is replete with citations to *Lee*. See, e.g., Kornhauser, *supra* note 1, at 965–66.

¹²¹ See *Smith*, 494 U.S. at 882. Appellate courts vary in the ways in which they interpret and apply the *Smith* decision. See Kornhauser, *supra* note 1, at 962.

¹²² See, e.g., Kornhauser, *supra* note 1, at 967.

¹²³ See, e.g., *Smith*, 494 U.S. at 890 (concluding that Oregon is not constitutionally required to accommodate the religious beliefs of Native Americans by permitting their sacramental ingestion of peyote, a hallucinogenic drug, while emphasizing that Arizona, Colorado, and New Mexico statutes allowing sacramental ingestion of peyote constitute constitutionally permissive accommodations).

¹²⁴ See, e.g., § 1402 of FICA, which exempts self-employed individuals from mandatory participation in the social security system of taxation. 26 U.S.C. § 1402 (2000). Also, Congress chose to exempt conscientious objectors from service in military combat when it passed § 6(j) of the Military Selective Service Act of 1967, 50 U.S.C. app. § 456(j) (1964 ed. Supp. V).

¹²⁵ See *infra* notes 138–41 and accompanying text.

¹²⁶ *Gillette v. United States*, 401 U.S. 437 (1971).

¹²⁷ *Id.* at 448–60.

In *Gillette*, a draftee who failed to report for induction into the military and a member of the armed services seeking discharge challenged the constitutionality of the exemption contained in the Military Selective Service Act.¹²⁸ The men claimed that construing the exemption to apply only to individuals who objected to participation in all wars unconstitutionally infringed upon the First Amendment rights of those individuals who were conscientiously opposed to particular wars.¹²⁹ However, the Court did not accept this argument. Rather, the Court ruled that the exemption is constitutional for several reasons. First, the exemption, on its face, does not provide special treatment to any particular religion.¹³⁰ The exemption applies to all individuals conscientiously opposed to all war, regardless of the type of religious beliefs underlying that conscientious opposition.¹³¹ Application of the exemption is not, for example, restricted to Christian conscientious objectors.

Second, the Court stated that the exemption advanced secular purposes "having nothing to do with a design to foster or favor any sect, religion, or cluster of religions."¹³² The Court identified two secular purposes that were furthered by the exemption. First, the Court identified that a sincere conscientious objector is likely to make a very poor soldier and thus, resources would likely be wasted in attempting to transform such a person into an effective fighter.¹³³ In addition, the Court noted that the exemption reflects the idea that "'in the forum of conscience, duty to a moral power higher than the State has always been maintained.'"¹³⁴

The constitutionality of the Religious Freedom Peace Tax Fund Act should be upheld for similar reasons. The Act, like the exemption of conscientious objectors from military combat, advances secular purposes. First, like the conscientious objector exemption in the Military Selective Service Act, the Religious Freedom Peace Tax Fund Act reflects the secular notion that duty to one's conscience reigns supreme and would further reflect an appreciation of the difficulty a conscientious objector faces every April 15 when she must decide between complying with federal income tax law and following the dictates of her

¹²⁸ *Id.* at 448.

¹²⁹ *Id.*

¹³⁰ *Id.* at 450-51. The Court stated that "[t]he specified objection must have a grounding in 'religious training and belief,' but no particular sectarian affiliation or theological position is required." *Id.*

¹³¹ *Id.* at 450.

¹³² *Gillette v. United States*, 401 U.S. 437, 452 (1971).

¹³³ *Id.* at 452-53.

¹³⁴ *Id.* at 453 (citing *United States v. Macintosh*, 283 U.S. 605, 633 (1931) (Hughes, C.J., dissenting)). The Court also stated that the exemption evinced an appreciation of the difficult decision that would face a drafted conscientious objector and, in addition, to shield the objector from having to make a choice between complying with the law and remaining true to his conscience. *Id.*

conscience.¹³⁵ In addition, enactment of the Peace Tax Fund would advance the secular and pragmatic purpose of increasing the amount of revenue generated by the IRS while simultaneously decreasing the IRS's collection costs by encouraging conscientious objectors to pay their taxes.¹³⁶ In so doing, the Fund would not provide special treatment to religious groups; rather, the Fund would accommodate conscientious objectors who are opposed to the use of their tax dollars for military spending on both religious *and* secular grounds.¹³⁷

Next, implementation of the Fund would not lead to excessive government entanglement in religious matters. Treasury officials are concerned that the Fund would cause the IRS to become excessively entangled in religious matters because it would require the IRS to determine who meets the statutory definition of a "conscientious objector."¹³⁸ The IRS's role in the identification process would be the same as the Selective Service's role in identifying conscientious objectors for purposes of applying the Military Selective Service Act's exemption.¹³⁹ In the years since the adoption of this exemption, the Selective Service's identification role has not been categorized as creating excessive government entanglement in religious matters.¹⁴⁰ Furthermore, the IRS may only be called upon to play this identification role when it conducts audits,¹⁴¹ and thus any government involvement would be better categorized as rare and minimal than as excessive.

¹³⁵ See *supra* note 134 and accompanying text.

¹³⁶ *Extension of Remarks: Peace Tax Fund Bill Deserves Support, Comments of George E. Brown Jr.*, 138 CONG. REC. 12,349, (1992) (statement of George E. Brown) (asserting that the Act would have the benefit of "reducing the present administrative and judicial burden caused when conscientious objectors feel forced to violate tax laws rather than violate their consciences . . . [T]he Internal Revenue Service will be able to collect full taxes from conscientious objectors without difficulty and added cost and strain on the judicial system.").

"[I]ncome taxes from individuals supply the biggest portion of revenues for the U.S. Treasury . . . [B]y its very nature, government is dependent on [its citizens]." *Citizen's Guide*, *supra* note 55, at 3–4. Consequently, legislation that would encourage individuals to pay their income taxes, and thus increase the total revenues generated by the IRS, would provide the government with greater resources to utilize in its operation.

¹³⁷ See Kornhauser, *supra* note 1, at 996.

¹³⁸ See, e.g., *id.* at 997.

¹³⁹ See *supra* Section IV.A.

¹⁴⁰ Kornhauser, *supra* note 1, at 996.

¹⁴¹ See *id.* at 1001. The IRS *may* only be called on to play this role when it conducts routine audits because the need to "police claimants" would be small, in part, because taxpayers would have no financial incentives to disingenuously assert conscientious objector status. *Id.*; see *supra* notes 93–94 and accompanying text. See generally *infra* Section VI.A (providing suggestions on how to improve the Religious Freedom Peace Tax Fund Act to help ensure that if it was enacted, it would not be exploited by the disingenuous).

VI. CRITICISMS OF THE RELIGIOUS FREEDOM PEACE TAX FUND BILL

The supporters of the Peace Tax Fund include a multitude of private individuals within the United States, over 150 organizations,¹⁴² and more than fifty members of Congress.¹⁴³ Of those who support the Peace Tax Fund, including members of Congress, not all are conscientiously opposed to war.¹⁴⁴ On an international level, countries and international organizations have demonstrated an interest in protecting the rights of conscientious objectors to follow their beliefs rather than be compelled to follow laws that directly violate those beliefs,¹⁴⁵ and many countries¹⁴⁶ have “active Peace Tax Campaigns” of their own.¹⁴⁷ Despite the support for the Peace Tax Fund within the United States and throughout the world, there are also critics of the Fund.¹⁴⁸ This section will outline and respond to several of these arguments. In doing so, it will provide additional support for the Fund beyond the constitutional support that was established in the prior section.

¹⁴² The organizations that support the Peace Tax Fund Bill include the following: American Friends Service Committee, American Arab Anti-Discrimination Committee, Baptist Peace Fellowship of North America, Brethren in Christ Church, Buddhist Peace Fellowship, Church of the Brethren, Disciples of Christ, Episcopal Peace Fellowship, Fellowship of Reconciliation, Friends Committee on National Legislation, General Board of Church and Society of the Methodist Church, General Conference Mennonite Church, Grandmothers for Peace, Jewish Peace Fellowship, Lutheran Peace Fellowship, Mennonite Central Committee Peace Section, Mennonite Church, National Assembly of Religious Women, National Federation of Priests Councils, New Call to Peace Making, Pax Christi (U.S.A.), Presbyterian Church U.S.A., Presbyterian Peace Fellowship, Sojourners, Unitarian Universalist Association, United Church of Christ, U.S. Catholic Conference (Office of International Peace and Justice), Veterans for Peace, Women’s International League for Peace and Freedom, and World Peacemakers. National Campaign for a Peace Tax Fund, *Campaign Fact Sheet*, at www.peacetaxfund.org (last visited Oct. 23, 2003).

¹⁴³ See generally *Background to the Peace Tax Fund*, *supra* note 16.

¹⁴⁴ See Kornhauser, *supra* note 1, at 940 n.1. For example, Andy Jacobs, a member of the House of Representatives, was one of the main supporters of the Peace Tax Fund Bill even though he previously worked as a Marine and served his country in Korea. See *id.*

¹⁴⁵ See *Campaign Fact Sheet*, *supra* note 142. Poland, Russia, Hungary, and Brazil have enacted legislation that protects the rights of conscientious objectors. See *id.* In addition, the United Commission of Human Rights in 1989 acknowledged the legitimacy of conscientious objectors’ beliefs. See *id.*

¹⁴⁶ Among these nations are Australia, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, and the United Kingdom. *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ See, e.g., Kornhauser, *supra* note 1, at 997–1011 (explaining and responding to the administrative, policy-oriented, and floodgates arguments asserted by critics of the Act, including the Treasury Department).

A. The Peace Tax Fund Will Not be Exploited by the Disingenuous

The most current form of the Act, H.R. 2037, would apply to designated conscientious objectors, meaning taxpayers who are “opposed to participation in war in any form based upon the taxpayer[s’] deeply held . . . beliefs or training . . . and who have certified these beliefs in writing to the Secretary of the Treasury in such form and manner as the Secretary provides.”¹⁴⁹ Some critics fear that allowing conscientious objectors to assert their status through the provision of a mere personal statement of beliefs would provide non-conscientious objectors with an incentive to exploit this accommodation.¹⁵⁰ They fear that as the number of people who claim the exemption increases, the amount of funds available for military spending would decrease.¹⁵¹ If this results, the IRS would be forced to allocate a greater number of its limited resources to auditing individuals to discern whether they are true conscientious objectors.¹⁵²

One way to eliminate these concerns in a manner that is compatible with the 2003 version of the Religious Freedom Peace Tax Fund Act would be to change the process by which objectors assert their status so that it is more involved and thus, less amenable to false claims.¹⁵³ For example, a fee could be attached to

¹⁴⁹ H.R. 2037 § 3(a).

¹⁵⁰ Kent Greenawalt, *Conflicts of Law and Morality—Institutions of Amelioration*, 67 VA. L. REV. 177, 208 n.77 (1981). For example, this process would enable individuals who dislike war, but whose beliefs do not reach the level of conscientious objection, to make the easy and more comfortable decision to re-route their tax dollars to fund non-military endeavors. In addition, those who advocate change, in the long-term, in the way government spends tax dollars, could take advantage of this process to promote their political agendas. These individuals would hope that a large number of participants in this program would send the message to the government that Americans desire a change in the way tax dollars are spent.

These concerns are similar to those expressed by American government leaders in response to the possibility of exempting conscientious objectors from combatant service during World War I. See *supra* note 33 and accompanying text.

¹⁵¹ See *Marketplace*, *supra* note 3 (comments of Karl Manheim); Kornhauser, *supra* note 1, at 997–98.

¹⁵² See Kornhauser, *supra* note 1, at 997–98; see also *infra* Section VI.B. (addressing and disposing of concerns that the Fund would result in the imposition of a large administrative burden upon the IRS).

¹⁵³ The 2003 version of the Act states that money would be deposited into the Fund “in a manner that minimizes the cost to the Treasury and does not impose an undue burden on such taxpayers.” H. R. 2037 § 4(a); see *supra* note 99 and accompanying text. Arguably, the “undue burden” language within the Act does not foreclose the possibility of assessing a fee provided that the fee, particularly the amount of the fee, is not unduly burdensome. *Id.* Also, the Act’s language emphasizes that while it is permissible to place a burden on the taxpayer, any burden or cost to the government in transferring money into the fund must be minimized. See H.R. 2037 § 4(a). The Act envisions the possibility, and even desirability, of shifting some of the burden to the individual taxpayer rather than requiring the government to absorb it. See H.R.

each application for conscientious objector status.¹⁵⁴ Attaching a cost would discourage the disingenuous from participating in the program.¹⁵⁵ In terms of another potential safeguard, Senator Hatfield noted, in reference to the 1985 version of the Peace Tax Fund Bill, that “[t]he IRS will no longer be required to challenge a conscientious objectors’ claim [in a federal court] Instead, the burden of proof . . . now falls upon the claimant.”¹⁵⁶ Thus, it would be possible to incorporate within the Act a provision that requires the claimant to bear the burden of proving her case rather than requiring the IRS to expend its resources in defending its conclusion that she does not qualify for the exemption. This provision would also serve as a deterrent to disingenuous individuals seeking to exploit the Fund.¹⁵⁷

B. The Fund Would Not Place a Large Burden upon the IRS

Critics, including Treasury officials, are concerned that implementation of the Fund would require the IRS to expend time and money trying to determine which purported conscientious objectors possess sincerely held beliefs.¹⁵⁸ According to these officials, the fact that the Act defines conscientious objectors in the same

§ 4(d). However, the 2003 version of the Act does not expressly provide for the assessment of a filing fee. *See generally* H.R. 2037.

¹⁵⁴ Greenawalt, *supra* note 150, at 208 n.77.

¹⁵⁵ *Id.*

¹⁵⁶ 131 CONG. REC. S19,601 (1985) (statement of Sen. Hatfield).

¹⁵⁷ Critics also fear that special interest groups interested in affecting change in the country’s spending policies will disingenuously claim conscientious objector status, or encourage others to do so are unfounded. *See* Kornhauser, *supra* note 1, at 1002. Special interest groups are not likely to allocate resources to encourage individuals to claim conscientious objector status on their tax returns for a couple reasons. *See* Kornhauser, *supra* note 1, at 1004. First, implementation of the Peace Tax Fund is extremely unlikely to make a sizeable difference in the amount of tax dollars that are available to fund military programs. *Id.* Consequently, special interests groups would have little incentive to spend their time and money encouraging Americans to claim conscientious objector status because of the small amount of monetary change that would result from subtracting conscientious objectors’ tax dollars out of the money allocated for military funding. *See id.*

Furthermore, special interest groups would have a difficult time sending their message to Americans due to the fact that Americans pay their taxes at different times despite the yearly April 15th deadline. *Id.* Individuals pay their taxes at a variety of times including months before the April 15th due date, days or weeks prior to the date, and in some cases, individuals who attain extensions pay after this date has passed. *Id.* Conscientious objectors would make the decision to allocate their tax dollars to the Fund when they file their returns and because this event can occur at extremely different times for different individuals, special interest groups would have great difficulty sending a message that all tax payers would be receptive to. *Id.*

¹⁵⁸ *Id.* at 997; *But see supra* Section V.B. (arguing that the Fund is a constitutionally permissive accommodation, in part, because implementation of the Fund would not lead to excessive government involvement).

way as the Military Selective Service Act does not lessen the IRS's burden because it is difficult to discern who qualifies as a conscientious objector under the Military Selective Service Act.¹⁵⁹

However, the burden imposed on the IRS by the Fund is likely to be minimal for several reasons. First, history shows that the Military Selective Service Act's criteria for identifying conscientious objectors are effective. The Act's exemption has been repeatedly, and successfully, utilized during wars to enable conscientious objectors an alternative to active combat. Thus, in a practical sense, it has not been difficult to discern who qualifies as a conscientious objector under the Act.¹⁶⁰ Additionally, any burden imposed upon the IRS is likely to be light given the relatively small number of individuals estimated to utilize the Fund if it is implemented.¹⁶¹ Only an estimated 150,000–250,000 households are likely to utilize the Fund.¹⁶² Furthermore, as the previous section indicates, the Act could place the onus upon the claimant to substantiate her pacifist beliefs rather than requiring the IRS to defend its determination that the individual did not meet the statutory requirements for conscientious objector status.¹⁶³

C. Implementation of the Fund Will Not Undermine Democratic Values nor Will It Provide Conscientious Objectors with an Unfair Advantage

Some commentators argue that despite the positive attributes of the Fund, implementation of the Fund would undermine the democratic system upon which our country was founded and has thrived since its inception.¹⁶⁴ Tax officials object to implementation of the Fund on the grounds that it would provide objectors an advantage over other Americans.¹⁶⁵ According to these officials, citizens of a representative democracy do not exert direct influence in making governing decisions, including the way tax dollars are spent; rather, citizens elect

¹⁵⁹ Kornhauser, *supra* note 1, at 998.

¹⁶⁰ *See id.* at 999.

¹⁶¹ *Id.* at 999–1000. The Act provides no economic incentives to individuals to make false claims. *See supra* note 141 and accompanying text. This would be particularly true if the suggestion to assess claimants a filing fee was implemented. *See supra* notes 153–55 and accompanying text.

It is important to note that the pool of conscientious objectors that would be eligible for exemption under the Act would be larger than the pool of conscientious objectors that are eligible for exemption under the Military Selective Service Act because the former group includes men and women and people of all ages unlike the latter group. However, in a theoretical sense, the incentive to fabricate a false claim is greater when one's life is at stake than it is in a scenario in which one's life is not endangered and there is not even an economic incentive to fabricate. *See Kornhauser, supra* note 1, at 999.

¹⁶² Kornhauser, *supra* note 1, at 999.

¹⁶³ *See supra* notes 156–57 and the accompanying text.

¹⁶⁴ *See Marketplace, supra* note 3 (comments of Gene Steuerle).

¹⁶⁵ *See Staudt, supra* note 100, at 569.

officials who represent their interests when making these decisions.¹⁶⁶ Officials argue that the Religious Freedom Peace Tax Fund Act gives conscientious objectors an advantage by allowing them to play a more direct role in the decision making process than other Americans who can only exert their influence through voting and other political processes.¹⁶⁷ These critics emphasize that conscientious objectors' inability to directly influence the way in which tax dollars are spent does not leave them without options.¹⁶⁸ They can "organize and lobby, [they] can earn less and pay less taxes, or [they] can give bigger sums to charity and take . . . tax deduction[s]."¹⁶⁹ Withholding funds from the IRS or attempting to re-route their tax dollars from military programs is not effective because of the state of the law, and because it fails to promote the democratic ideals upon which this country was founded.¹⁷⁰

In response to these criticisms it must be acknowledged that American government is not purely a representative democracy in which citizens only exercise their influence in an indirect fashion by voting for officials whose beliefs are similar to their own.¹⁷¹ Rather, direct voting, through initiatives and referenda, is common within this country, especially within the taxation arena.¹⁷² In addition, implementation of the form 1040 check off for the Presidential Election Campaign on federal tax returns illustrates a willingness to enable citizens to make direct decisions about how their tax dollars are spent.¹⁷³ This check off is different from the Peace Tax Fund in that it permits citizens to direct a much smaller amount of their tax dollars: three dollars as opposed to the entire amount.¹⁷⁴ However, the election check off actually represents a greater departure from representative democracy.¹⁷⁵ The check off enables citizens to direct their money to a very specific cause whereas the Fund only enables conscientious objectors to direct their funds to a very general category of activities and programs. The objector has no say in the specific way in which those funds will

¹⁶⁶ See *id.*

¹⁶⁷ *Id.*; *Miscellaneous Tax Bills and the Peace Tax Fund: Hearing on H.R. 65, H.R. 1733, H.R. 1870 Before the Subcomm. on Select Revenue Measures of the House Comm. on Ways and Means*, 102d Cong. 61 (1992) (Statement of Terrice Hyde, Tax Legislative Counsel, Department of Treasury).

¹⁶⁸ See, e.g., *Marketplace*, *supra* note 3 (comments of Gene Steuerle).

¹⁶⁹ *Id.* In fact, Steuerle argues that conscientious objectors actually make a bigger impact when they make charitable donations than when they attempt to keep their money out of the IRS's reach. *Id.*

¹⁷⁰ See Kornhauser, *supra* note 1, at 1003-04.

¹⁷¹ See *id.* at 1003.

¹⁷² See *id.* at 1003-04.

¹⁷³ See *id.* at 1005.

¹⁷⁴ See *id.*

¹⁷⁵ See *id.*

be spent. Rather, she knows only that her money will be used to fund non-military programs, of which there are many.

Furthermore, officials from the Treasury are concerned that the Act would give conscientious objectors an advantage over other Americans by enabling them to have a direct say over the way in which their tax dollars are spent.¹⁷⁶ According to these officials, allowing conscientious objectors to have this privilege would encourage other groups of Americans to request the same privilege for their groups.¹⁷⁷ These groups would demand the power to redirect their tax dollars away from government programs they disapprove of in order to fund programs that they deem acceptable.

In response, proponents of the Fund argue that:

The plight of those who object to military taxes on the basis of deeply held and universally recognized teachings is on a higher moral plane than objections based on mere political, social or economic preference. As such the Peace Tax Fund Bill will not open the door to other exceptions.¹⁷⁸

With the passage of the exemption contained in the Military Selective Act of 1967, Congress identified the importance of accommodating conscientious objectors rather than forcing them to make the choice between violating their beliefs and breaking the law.¹⁷⁹ Clearly, this country cannot accommodate every citizen's desires or preferences; however, the government has communicated that accommodation of conscience is not only a possibility, but a priority.¹⁸⁰ Also, the government, via the Supreme Court's decision in *Gillette*, has established limits on this accommodation.¹⁸¹ The Religious Freedom Peace Tax Fund Act asks for nothing more than a logical extension of the treatment bestowed upon conscientious objectors with the creation of the exemption from military service.

Finally, the very nature of the decision made by conscientious objectors, whether to allocate their tax dollars to military or non-military programs, is very different from decisions that other tax payers may want to have the power to make, such as whether to allocate their tax dollars to education or housing programs.¹⁸² The former decision is between two broad entities, while the later

¹⁷⁶ See *supra* note 167 and the accompanying text.

¹⁷⁷ See Kornhauser, *supra* note 1, at 1003.

¹⁷⁸ National Campaign for a Peace Tax Fund, *Advantages of a Peace Tax Fund*, available at <http://www.peacetaxfund.org> (last visited Oct. 23, 2003).

¹⁷⁹ See The Military Selective Service Act of 1967, 50 U.S.C. app. § 456(j) (1964 ed. Supp. V).

¹⁸⁰ See, e.g., Flowers, *supra* note 66, at 734–35 (1993). Not only does this country make accommodation a priority, but specifically, as Flowers observes, “[t]his country has a long tradition of accommodating conscience.” *Id.* (emphasis added).

¹⁸¹ *Gillette v. United States*, 401 U.S. 437 (1971).

¹⁸² Kornhauser, *supra* note 1, at 1004.

decision is between two very narrow entities and thus, the two are not equivalent. "Moreover, [the decision between military and non-military] is probably one of the most basic choices a voter could make,"¹⁸³ whereas the decision between education and housing is very complex.

VII. PRACTICALITIES OF IMPLEMENTING THE RELIGIOUS FREEDOM PEACE TAX FUND ACT

Economic benefits rather than detriments would result from implementation of the Act. The passage of the Religious Freedom Peace Tax Fund Act would not inhibit the government's ability to fund military activities and programs, despite increases in the amount of money allocated for military spending by the federal budget.¹⁸⁴ Rather, in 1992 and 1994, the Joint Committee on Taxation stated that implementation of the Fund would benefit the United States Treasury by increasing the amount of revenues generated through the income tax.¹⁸⁵ Moreover, the Fund would also benefit the economy by encouraging the tens of thousands of war tax resisters who intentionally earn less than the taxable level to earn to their full capacity and thus, increase their incomes.¹⁸⁶ The Peace Tax Fund would also have the effect of decreasing the amount of time and money expended by the IRS in collecting delinquent payments from conscientious objectors and enable the IRS to focus on solving other collection problems.¹⁸⁷

The economic feasibility associated with implementing the Peace Tax Fund is particularly attractive in light of the benefits that would accrue from passage of the Act. The Act would enable war tax resisters to follow their deeply held religious and humanitarian beliefs *and* to fulfill their civic duty to pay taxes.¹⁸⁸

¹⁸³ *Id.*

¹⁸⁴ See *supra* note 100 and accompanying text; *Citizen's Guide*, *supra* note 55, at 7. "[There] is [an] extremely small probability . . . that contributing to the fund would make an actual difference in the ultimate appropriations to the military." Kornhauser, *supra* note 1, at 1004.

¹⁸⁵ See H.R. 2037 § 2(5). Senator Hatfield, a strong supporter of the Act stated that "if enacted, [it] would allow complete participation in our Federal Government by all citizens without many being forced to compromise deeply held beliefs of any citizen." 142 CONG. REC. S7161 (1996) (statement of Sen. Hatfield).

¹⁸⁶ *Marketplace*, *supra* note 3.

¹⁸⁷ See, e.g., *Advantages of a Peace Tax Fund*, *supra* note 178; Kornhauser, *supra* note 1, at 1011. Kornhauser argues that the IRS would generate more income if it was able to focus on other collection problems because conscientious objectors tend to be low-income producers. *Id.*

¹⁸⁸ See *Marketplace*, *supra* note 3 (comments of Karl Manheim). This decision is particularly difficult because it leaves conscientious objectors with no legal alternative to violating their consciences by paying their taxes. See, e.g., Peace Taxpayers, *Legality*, available at <http://www.peacetax.org> (last visited Oct. 23, 2003). The government does not prevent these individuals from acting in a particular manner; rather "the government affirmatively compels them to take actions that violate their beliefs . . ." Kornhauser, *supra* note 1, at 1013. This

The Fund would provide a practical solution to the problem caused when objectors have to make a choice between these two important responsibilities. Passage of the Act would not provide conscientious objectors with special treatment nor would it absolve them from their civic responsibilities; and thus, it would simultaneously benefit conscientious objectors, the federal government, and the American people.¹⁸⁹

Furthermore, this accommodation is feasible in light of traditional American values.¹⁹⁰ Governmental actions, including exempting conscientious objectors from military combat¹⁹¹ and expanding the definition so that it applies to religious and secular conscientious objectors, illustrate a willingness to accommodate beliefs rather than to compel violation of those beliefs. The exemption contained in the Military Selective Service Act of 1967 provides individuals who are conscientiously opposed to war with an alternative way to serve their country during a time of war instead of requiring them to participate in active combat.¹⁹² The Act does not absolve conscientious objectors from their duty to serve their country.¹⁹³ Rather, the Act provides these individuals with the option to serve their country in a way that does not violate their religious or moral beliefs about war. Any person meeting the Act's definition of conscientious objector "shall . . . be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, . . . be ordered . . . to perform . . . civilian work contributing to the maintenance of the national health, safety, or interest . . ." ¹⁹⁴ Like the Religious Freedom Peace Tax Fund Act, the Selective Service Act, redirects "resources" in a way that accommodates the government's significant interests *and* the conscientious objectors' beliefs. Furthermore, in the taxation arena, Congress has also protected the rights of individuals who oppose social security taxes on religious grounds by approving an exception from payment of these taxes for self-employed individuals.¹⁹⁵

affirmative compulsion serves to distinguish this scenario from other cases in which the Court has identified the existence of infringement upon the free exercise of religious and moral beliefs, but held that the infringement did not reach the level of unconstitutionality and thus, did not warrant accommodation of those beliefs. *Id.*

¹⁸⁹ Kornhauser, *supra* note 1, at 1011–13.

¹⁹⁰ See *id.* (discussing the accommodations, in the form of exemptions from combatant service, that conscientious objectors have been granted throughout American history).

¹⁹¹ See *id.*; see, e.g., The Military Selective Service Act of 1967, 50 U.S.C. app. § 456(j) (1964 ed. Supp. V).

¹⁹² The Military Selective Service Act of 1967, 50 U.S.C. app. § 456(j) (1964 ed., Supp. V). The Act states that no person shall be subject to "service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ 26 U.S.C. § 1402(g) (2000).

Tax resisters' confidence in this country's system of taxation and in the IRS would also increase.¹⁹⁶ In addition, *society's* confidence in the income tax system would increase upon enactment of the Religious Freedom Peace Tax Fund Act.¹⁹⁷ Many individuals who are not opposed to the use of tax dollars to fund military programs sympathize with conscientious objectors' position and view the seizure of conscientious objectors' property and other penalties as unfair treatment.¹⁹⁸ Consequently, accommodation of conscientious objectors' beliefs would be viewed as fair and reasonable treatment and thus, increase societal confidence in the tax system and the IRS.

VIII. CONCLUSION

The Religious Freedom Peace Tax Fund is a constitutional and practically feasible way to accommodate the beliefs of conscientious objectors and to simultaneously provide economic benefit to the United States. The concerns of conscientious objectors are amplified in the wake of the war in the Middle East, the United States's continued occupation of Iraq, and continued involvement in the affairs of countries throughout the world. Clearly, the United States faces enemies outside its boundaries. The Peace Tax Fund provides this country with an opportunity to avoid creation of enemies within its boundaries by accommodating conscientious objectors in a way that enables them to follow the law while following their beliefs.

¹⁹⁶ See Kornhauser *supra* note 1 at 1012.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*